

From: Brent Johnson
To: Julia D'Alesandro
Date: 3/20/01 1:04PM
Subject: Re: Bail Enhancement and Court Costs

Answers below each question.

Julia D'Alesandro 03/16/01 04:45PM

State Audit has posed the following issues:

1) When a warrant is re-issued for failure to appear on an outstanding citation, can the court charge a second bail-enhancement fee? Assume the defendant has never appeared and it is just a matter of re-issuing the bench warrant (presumably they are filing an information now too if one wasn't filed when the first warrant issued).

Bail enhancement is not a "fee." To that end, courts have a lot of discretion when setting and increasing (or enhancing) bail. The critical inquiry is the amount that a person is ultimately ordered to pay as a fine. As you are aware, the fine and bail schedule should be followed absent extraordinary circumstances, and this is more important for the fine than it is for the bail (although the bail should typically followed too, it simply is not as critical as long as the defendant is only ordered to pay what the bail schedule calls for). A fine can be increased for an initial failure to appear. If a defendant has subsequent failures to appear, a court could theoretically increase the fine based on the defendant's aggravating behavior. However, if the court is simply reissuing a warrant without any additional bad behavior by the defendant, the fine should not be increased.

2) Can the court assess defendant \$ when a warrant is issued post-adjudication?

A court can order a defendant to pay court costs if a defendant does not comply with the sentence. However, the imposition of these costs is rare because court costs are usually only those that are atypical. Meaning the types of costs that are not usually associated with a case, and warrants are often associated with a case. More often, courts will proceed as outlined below.

3) Can the court assess defendant \$ for failure to comply with the court's orders (assume no portion of fine or sentence was suspended). If so, can this be assessed without a hearing?

A defendant's failure to comply can be treated as contempt of court. Additional penalties can be assessed based on the contempt. UCA 78-32-10 provides for jail time and/or a fine. UCA 78-32-11 allows for the imposition of expenses. However, fines, jail and penalties cannot be assessed without a hearing. Without a contempt hearing, a court cannot assess a penalty for failure to comply. Note: even if a court has suspended a portion of a sentence, the suspended portion cannot be reinstated without a hearing.

These answers may be somewhat jumbled, so if you'd like to discuss them, feel free.

Thanks for your help.